

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to appeals and hearings

The Human Services Department hereby amends Chapter 7, “Appeals and Hearings,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 217.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 217.6.

Purpose and Summary

As part of the five-year rules review process, the Department’s appeal rules were reviewed.

This rule making reflects changes in the new service standards implemented for first-class mail by the United States Postal Service (USPS). These amendments ensure consistency with other state agencies regarding the use of the Rules of Civil Procedure for abandoned appeals. Further clarification has been added when an appeal hearing cannot be granted in specific situations.

In October 2021, the USPS implemented new service standards for first-class mail. Mail traveling within a local area will continue to be two-day delivery. A local area is defined as a three-hour drive (or less than 140 miles) between an originating facility and destination-processing facility. However, mail that must travel greater distances will take longer to deliver. Mail pieces can take up to five days for delivery.

Due to the new service standards, the USPS recommends mail or correspondence that requires a deadline be sent early. Federal and state regulations dictate time frames for appeals from start to finish, as well as for specific steps throughout the process. These same regulations restrict the early issuance of appeal correspondence. Based on this change, the Department is amending the time frame for requesting a review or submitting a motion to vacate from 10 days to 14 days.

When a party fails to appear for an appeal hearing, an Abandonment Order may be issued and the party is given an opportunity to file a motion to vacate stating the good cause reasons the party missed the appeal hearing. These amendments revise the definition of “good cause” for setting aside a default judgment to match the definition used in Iowa Rule of Civil Procedure 1.971 and make the definition consistent with definitions used by other departments within state government.

A hearing may not be granted when the appeal involves patient treatment interventions outlined in the patient handbook of the Civil Commitment Unit for Sexual Offenders. These amendments reflect that a hearing cannot be granted in this circumstance.

For persons other than attorneys seeking to act as authorized representative of a party-in-interest in a Medicaid managed care appeal, the authorized representative’s written designation of authority pursuant to subrule 7.16(2) shall be Form 470-5526, Authorized Representative for Managed Care Appeals. These amendments reflect that the form is required for appeals that are handled through the expedited and standard appeals processes and allows for an appeal to be denied if a completed form is not provided.

Language regarding dates for adoption of federal law or regulation is added in this rule making.

As part of this review, the Department reached out to Iowa Legal Aid and Disability Rights Iowa as stakeholders in the appeals process. Iowa Legal Aid suggested a clarification be made in subrule 7.16(3) indicating attorneys are not required to submit a completed Form 470-5526 to represent an appellant during a managed care organization state fair hearing. The Department concurs with this suggestion. This is a positive change for parties-in-interest.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on April 20, 2022, as **ARC 6298C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on June 9, 2022.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on September 1, 2022.

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** definition of “In-person hearing” in rule **441—7.1(17A)**:
“*In-person hearing*” means an appeal hearing where the administrative law judge and appellant are physically present in the same location but witnesses are not required to be physically present.

ITEM 2. Amend rule **441—7.1(17A)**, definition of “Good cause,” as follows:
“*Good cause,*” ~~means an intervening cause, not attributable to the negligence of a party, reasonably resulting in a delay or failure to attend, for purposes of subrules 7.4(3) and 7.9(2) for purposes of this rule,~~ shall have the same meaning as “good cause” for setting aside a default judgment under Iowa Rule of Civil Procedure 1.971.

ITEM 3. Amend rule 441—7.2(17A) as follows:

441—7.2(17A) Governing law and regulations. In the absence of an applicable rule in this chapter, the DIA rules found at 481—Chapter 10 govern department appeals. Notwithstanding the foregoing and the rules contained in this chapter, to the extent that federal or state law (including regulations and rules) related to a specific program is more specific than or contradicts these rules or the applicable DIA rules, the program-specific federal or state law shall control. For example, Supplemental Nutrition Assistance Program (SNAP) appeals shall be conducted in accordance with 7 CFR 273.15 and 7 CFR 273.16 as amended to December 8, 2021, and medical assistance appeals shall be conducted in accordance with 42 CFR Part 431, subpart E, and Part 438, subpart F, as both are amended to December 8, 2021.

ITEM 4. Renumber subrules **7.3(2)** to **7.3(4)** as **7.3(4)** to **7.3(6)**.

ITEM 5. Adopt the following **new** subrules 7.3(2) and 7.3(3):

7.3(2) Refusal to process an application. Unless otherwise provided by law, when an appellant seeks a contested case hearing after the department refuses to process an application for benefits or services, a hearing shall be granted.

7.3(3) When a hearing is not granted. A hearing shall not be granted when one of the following issues is appealed:

a. Patient treatment interventions outlined in the patient handbook of the civil commitment unit for sexual offenders.

b. Children have been removed from or placed in a specific foster care setting or preadoptive placement.

ITEM 6. Amend paragraph **7.6(3)“b”** as follows:

b. *Additional designation of issues.* If any party believes additional issues should be designated, ~~on or before the tenth day following the date of the notice of hearing,~~ the party shall identify ~~those~~ the additional issues within the following timelines. The presiding officer shall determine whether all issues have properly been preserved.

(1) Child abuse and dependent adult abuse registry appeals. For child abuse and dependent adult abuse registry appeals, the party shall identify additional issues at least 30 days before the date of hearing.

(2) Appeals set on or before the tenth day following the notice of hearing. If the hearing is ~~within ten days of~~ on or before the tenth day following the date of the notice of hearing, the party shall identify any additional issues at the hearing.

(3) All other appeals. For all other appeals not identified in this paragraph, the party shall identify the additional issues on or before the tenth day following the date of the notice of hearing.

ITEM 7. Amend subrule 7.7(1) as follows:

7.7(1) Medical assistance. In cases involving the determination of medical assistance, the contested case hearing shall be held within a time frame such that the final administrative action is timely pursuant to 42 CFR 431.244(f) as amended to December 8, 2021.

ITEM 8. Renumber subrules **7.9(5)** and **7.9(6)** as **7.9(6)** and **7.9(7)**.

ITEM 9. Adopt the following **new** subrule 7.9(5):

7.9(5) Standard of review. In child abuse appeals, the criteria and level of deference by which the presiding officer shall render a decision is based on a preponderance of evidence.

ITEM 10. Amend paragraph **7.11(1)“a”** as follows:

a. A request for director’s review shall be in writing and postmarked or received within ~~ten~~ 14 calendar days of the date on which the proposed decision was issued, except as provided for under paragraph 7.11(1)“b.” A request for director’s review may be accompanied by a brief written summary of the arguments in favor of director’s review.

ITEM 11. Amend subrule 7.11(2) as follows:

7.11(2) Grant or denial of review. The department has full discretion to grant or deny a request for review. In addition, the director may initiate review of a proposed decision on the director’s own motion at any time on or before the ~~tenth~~ fourteenth day following the issuance of the proposed decision.

When the department grants a request for director’s review, the appeals section shall notify the parties to the appeal of the review request and enclose a copy of the request. All other parties shall have ~~ten~~ 14 calendar days from the date of notification to submit further written arguments or objections for consideration upon review.

ITEM 12. Amend subrule 7.11(3) as follows:

7.11(3) Cross-appeal. When a party requests director’s review in accordance with subrule 7.11(1), the remaining parties shall have ~~ten~~ 14 calendar days from that date to submit cross-requests for director’s review. The party originally seeking director’s review shall have ~~ten~~ 14 calendar days from the date of

the cross-request for director's review to submit further written arguments or objections for consideration upon review.

ITEM 13. Amend subrule 7.16(3) as follows:

7.16(3) *Written designation.* For persons other than attorneys seeking to act as authorized representative of a party-in-interest in a Medicaid managed care appeal, the authorized representative's written designation of authority pursuant to subrule 7.16(2) shall be Form 470-5526, Authorized Representative for Managed Care Appeals. This form is required for all managed care appeals, including those handled through the expedited appeals process. Failure to provide the form or legal documentation may result in denial of the appeal request.

ITEM 14. Amend rule 441—7.19(17A), introductory paragraph, as follows:

441—7.19(17A) Supplemental Nutrition Assistance Program (SNAP) administrative disqualification hearings. The department acts on alleged intentional program violations either through an administrative disqualification hearing or referral to a court of appropriate jurisdiction. An individual accused of an intentional program violation may waive the individual's right to an administrative disqualification hearing in accordance with the procedures outlined in this rule and in 7 CFR 273.16(e) and (f) as amended to December 8, 2021.

[Filed 6/9/22, effective 9/1/22]

[Published 6/29/22]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/29/22.